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C O N F I D E N T I A L SECTION 01 OF 02 ISLAMABAD 001173

SIPDIS

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TAGS: PREL PTER PGOV PK

SUBJECT: MUMBAI PROSECUTION UPDATE: HEARING POSTPONED TO JUNE 6

REF: A. ISLAMABAD 1077  
    IB. NEW DELHI 1038

Classified By: Anne W. Patterson for reasons 1.4 (b), (d).

11. (C) Summary: On May 23, the Anti-Terrorism Court (ATC) gave Pakistan's Federal Investigative Agency (FIA) another extension to file its final charge sheet. The FIA and GOP prosecutors appeared before new ATC judge Khadim Hussain to request additional time to organize the case against the arrested Mumbai Attack suspects. The court will convene again June 6. The FIA continues to show collected evidence to Embassy Legatt. The FIA also has received a dossier from the GOI, answering the GOP's list of questions; the FIA, however, has reportedly submitted to the Pakistani Foreign Ministry a list of follow-up questions for the GOI. End summary.

Prosecution Update

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12. (C) On May 23, the ATC further extended the FIA's time to file the final charge sheet in the case against the arrested Mumbai Attack suspects. The FIA and prosecutors requested additional time to collect the necessary evidence; the ATC set the next hearing for June 6. New ATC judge Khadim Hussain is expected to decide procedural matters and review the full charge sheet on this date. The FIA is not yet sure how Hussain will handle the proceedings, but it appears he may be more inclined to entertain video-link testimony. The top Lashkar-e-Taiba (LeT) leaders in custody -- Lakhvi, Zarrar Shah, and al Qama -- could also be released at the June 6 hearing if there is not enough evidence to make a case.

FIA Evidence Update

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13. (C) On May 23, the FIA informed the ATC that FIA's Special Investigations Group (SIG) Director and its Lead Case Investigator would travel to the U.S. to conduct interviews and gather statements from six FBI employees and two witnesses. They will need to return before the next court date on June 6, though FIA is reviewing the possibility of taking these statements via video teleconference. On May 20, the FIA clarified that it will be able to incorporate information from the FBI lab into its interim charge sheet as proceedings continue. The certified and authenticated copies will be required for the final charge sheet. The FIA investigators will type their handwritten notes from their interviews in the U.S. into a document for incorporation into

the final charge sheet to be presented to the ATC.

¶4. (C) In a meeting with Embassy Legatt, the FIA showed the FBI photos of items seized from LeT camps, to include photos of washing machine timers. The FIA posited that washing machine timers were being used in IEDs and, thus, a bomb expert witness may be required to testify to the significance of the timers found in the camps. Legatt will follow up with the FIA to secure such an expert witness, potentially from the FBI Bomb Data Center.

¶5. (C) On May 18 and 20, the FIA shared with Legatt more of the evidentiary details that will be used in the prosecution.

The FIA showed a powerpoint presentation outlining the important evidence found at each search location. Evidence exploited includes life jackets, bomb timers, terrorist phone numbers, and fingerprints. The FBI is actively involved in helping the FIA analyze the collected evidence.

¶6. (C) In discussing the GOI's request for a Pakistani investigation summary, FIA Director General Khosa had no objection to the FBI passing such a summary to the GOI. The purpose of the investigation summary would be to show the GOI that the GOP is conducting a thorough, competent investigation. Legatt will prepare such a summary based on the FIA's interim report, emphasizing the importance of the GOI's sharing requested evidence and entertaining the idea of making Indian detainees available as witnesses.

Information From India

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¶7. (SBU) As reported in press and by Embassy New Delhi, Indian officials have passed answers to the FIA's questions to the GOP. According to the Indian Ministry of External Affairs, the dossier and evidence were given to the Pakistani High Commission in New Delhi, and FIA has confirmed receipt. Even with this new dossier, the FIA will still require more information and evidence from the GOI and the USG to successfully prosecute the suspects it has in custody. Reportedly, another list of FIA follow-up questions and other requests has been passed to Pakistan's Foreign Ministry for transmission to the GOI.

¶8. (C) Indian Polcouns told Polcouns May 27 that, despite several public benchmarks for progress in the investigation, the GOI was looking for ways to put the relationship back on track. New Delhi was encouraged by the Swat military operation and hoped the latest GOI response to Pakistan's questions would allow the prosecution to move forward. He questioned press reports that the judge in the case had been replaced but concluded this meant the GOP had been dissatisfied with the level of cooperation from the prior judge; appointment of a new judge appeared to the GOI to be a good sign.

PATTERSON